

Members

Sen. Beverly Gard, Chairperson
Sen. Kent Adams
Sen. Vi Simpson
Sen. Glenn Howard
Rep. Mark Kruzan
Rep. Richard Mangus
Rep. Dale Sturtz
Rep. David Wolkins
David Benshoof
Michael Carnahan
Randy Edgemon
Hon. Jack Fowler
Marvin Gobles
William Goffinet
Max Goodwin
Lori Kaplan
Regina Mahoney
Kerry Michael Manders
David Rector
Gary Redding
Alice Schloss
Lynn Waters



ENVIRONMENTAL QUALITY SERVICE COUNCIL

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Authority: P.L. 248-1996 (SEA 138)

MEETING MINUTES¹

Meeting Date: June 29, 1999
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Beverly Gard, Chairperson; Sen. Kent Adams; Sen. Glenn Howard; Rep. Mark Kruzan; Rep. Richard Mangus; Rep. David Wolkins; David Benshoof; Michael Carnahan; Randy Edgemon; Hon. Jack Fowler; Marvin Gobles; William Goffinet; Commissioner Lori Kaplan; Regina Mahoney; Kerry Michael Manders; David Rector; Gary Redding; Alice Schloss.

Members Absent: Sen. Vi Simpson; Rep. Dale Sturtz; Max Goodwin; Lynn Waters.

NOTE: This version of the minutes of June 29, 1999 incorporates a correction approved by the EQSC on August 10, 1999.

The Chairperson of the Environmental Quality Service Council (EQSC), Senator Beverly Gard, called the meeting to order at approximately 1:10 p.m. She welcomed all who were present, introduced the members of the EQSC, and briefly reviewed the topics assigned to the EQSC for study in the 1999 interim period.

Senator Gard then introduced Lori Kaplan, the newly-appointed Commissioner of the Indiana Department of Environmental Management (IDEM). Commissioner Kaplan addressed the EQSC on the operations and activities of IDEM over the six month period ending on May 31, 1999. In her

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comments, Commissioner Kaplan highlighted and summarized information presented in certain printed materials, copies of which had been given to the members of the EQSC. These printed materials included:

- ! a summary of the IDEM's outreach, education, and assistance activities over the six month period;
- ! a summary of recent IDEM rulemaking activities;
- ! a statement of the total fees collected by IDEM in the first five months of 1999, in 1998, and in 1997;
- ! a report on the timeliness of IDEM's issuance of permits;
- ! press releases issued by IDEM during the six month period; and
- ! a summary of 1999 legislation affecting IDEM.

Commissioner Kaplan emphasized that IDEM has not been late in the issuance of a permit since October of 1998, a period of seven months; that IDEM's proposed new rule establishing ground water quality standards is advancing in the rule adoption process; and that several public meetings have been held concerning IDEM's proposed rule on animal confined feeding operations, which is expected to become effective this fall.

Senator Gard asked whether IDEM makes the comments on proposed rules that it receives available for reading on its Internet web site. Deputy Commissioner Tim Method answered that comments on proposed rules, IDEM's responses to those comments, and all other materials that IDEM send to the appropriate board concerning a proposed rule are posted on the Internet.

Commissioner Kaplan discussed IDEM's efforts to establish its next two-year plan, which will be set forth in IDEM's next Environmental Partnership Performance Agreement with the Region 5 office of the U.S. EPA. The IDEM's strategic priorities for the next two years, Commissioner Kaplan said, will be established with input from IDEM's staff, interested groups and individuals, and the public.

Commissioner Kaplan stated that IDEM's strategic priorities for the next two years will probably include the following:

1. A focus on environmental information technology and how to use it to greater benefit.
2. Reduction in the exposure of the public, especially children, to toxic substances such as lead and mercury.
3. Environmental policies such as livable communities and the prevention of urban sprawl.
4. Efforts at improving conditions and operations within IDEM such as programs for staff to make IDEM a better place to work and a renewed focus on IDEM's regional offices.

Commissioner Kaplan invited comments on these strategic priorities. In response to a question from Representative Kruzan, she said that she is not 100% satisfied with current efforts to reduce the public's exposure to toxic substances.

Commissioner Kaplan then discussed 1999 legislation affecting IDEM and, in particular, legislation that established topics for study by the EQSC. She made the following comments about the EQSC's 1999 study topics:

1. With respect to the topic of the feasibility of an air emission reduction credit program (HEA 1561), IDEM will be happy to host a discussion of this subject among interested parties.
2. With respect to the topic of the hazardous waste manifest program (HEA 1578), IDEM is willing to discuss potential recommendations concerning this program.
3. With respect to the topic of permit accountability time frames (HEA 1919), IDEM recommends that the current program should continue. IDEM has tried to use the permit-by-rule option as much as possible to accelerate permit issuance.
4. With respect to the topic of a proposed non-rule policy addressing air pollution emissions from sources of styrene (HEA 1919), IDEM is working on the non-rule policy as required by legislation and will report to the EQSC about it.
5. With respect to the topic of whether a person who applies before December 31, 1999 for

authority to perform an environmental investigation, remediation, or closure should, if the person so chooses, be subject to the requirements in effect before the publication of IDEM's RISC document (HEA 1919), IDEM is reviewing this matter and will be prepared to report to the EQSC about it.

6. With respect to the topic of an EQSC study to evaluate different approaches for determining the allocation of the costs of all department services that support dedicated funds (HEA 1578), IDEM has proposed that a third party be hired to conduct this study.

7. With respect to the topic of the requirement that IDEM maintain certain statistics on the use of environmental audit reports; propose an enforcement policy that provides relief from civil penalties for certain voluntary disclosures; and report annually to the EQSC on its use of environmental audit reports and the effectiveness of the enforcement policy (HEA 1919), IDEM will report to the EQSC on these matters.

Senator Gard asked a question about Senate Bill 343, which would have limited the designation of water bodies as outstanding state or national resources but was vetoed by Governor O'Bannon. Commissioner Kaplan responded that IDEM is putting together an advisory group to discuss water quality issues, has requested the participation of certain interested parties in this group, and will report to the EQSC on the group's activities.

Following Commissioner Kaplan's presentation, Senator Gard introduced Janet McCabe and Bernie Paul, two speakers whom she had invited to address the EQSC on the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in the case of *American Trucking Associations, Inc. v. U.S. E.P.A.*, 175 F.3d 1027, 48 ERC 1417 (D.C.Cir., May 14, 1999) (NO. 97-1440, 97-1565, 97-1510, 97-1559, 97-1502, 97-1548, 97-1562, 97-1546, 97-1551).

Janet McCabe, Assistant Commissioner and head of the IDEM's Office of Air Management, discussed the *American Trucking* decision and its legal background and implications. She made the following points:

- ! Until 1997, the nation's ozone standard was 125 parts per billion, measured over one hour. In July of 1997, the EPA developed a stricter ozone standard of 85 parts per billion measured over *eight* hours, as well as a new standard for particulates. Litigation was initiated to challenge the new ozone and particulates standards.
- ! In September of 1998, the EPA directed 22 states, including Indiana, to develop plans by September 1999 to reduce emissions of nitrogen oxides. Indiana and seven other states initiated litigation challenging the EPA's nitrogen oxide directive and seeking a six month extension of time within which to develop their emissions reduction plans.
- ! IDEM, in compliance with the EPA's mandates, (1) formed regional ozone steering committees for seven urban areas of Indiana to develop measures needed to meet the new ozone standard and (2) began the adoption of rules to reduce nitrogen oxide emissions.
- ! On May 14, 1999, the U.S. Court of Appeals for the District of Columbia made the first of two decisions affecting these EPA mandates when it issued its opinion in the *American Trucking* case. The Court decided that the construction of the Clean Air Act on which the EPA relied in promulgating the new ozone standard constituted an unconstitutional delegation of legislative power. The Court did not nullify the new ozone standard altogether, but required the EPA to reconsider the standard and made the standard temporarily unenforceable.
- ! On May 25, 1999, in its second decision, the Court granted the states' motion for a stay of the deadline for submitting their nitrogen oxide emissions reduction plans, pending the Court's decision on the merits of the case.
- ! The EPA is appealing the Court's decision on its new ozone standard, and the Court of Appeals has not yet rendered a substantive decision on the nitrogen oxide emissions reduction plans.

So both matters are now in limbo. Indiana has developed a proposed rule based on the new ozone standard, but final adoption of the rule is on hold for now. And Indiana is continuing to develop a nitrogen oxide emissions reduction plan, using the extra time granted by the Court to work toward a plan that will achieve needed reductions in a sensible way.

Bernie Paul of Eli Lilly and Company discussed major issues arising out of the *American Trucking* case. He made the following points:

- ! Some think that the *American Trucking* decision represents an important new limit on federal rulemaking, but others think not. In his opinion, the *American Trucking* decision sent a message that the EPA may no longer be given as much leeway in rulemaking as it formerly was, at least when the economic implications are as great as in the case of the new ozone standards. The decision said that the EPA, in setting standards, can't just pick a number, but must justify the number selected.
- ! In *American Trucking*, the Court did not vacate the ozone standard but merely told the EPA to rethink and justify its decision. It is possible that this ruling will lead to a reevaluation of the ozone standard. In his opinion, however, any reevaluation would come, if at all, after the presidential election.
- ! Indiana will eventually be subject to an ozone standard similar to, if not the same as, the eight hour standard involved in the *American Trucking* case. So Indiana must continue to prepare.
- ! In his opinion, the discussions of the regional ozone steering committees formed by IDEM must go forward. The steering committee on which he serves (the one for Central Indiana) has had difficulty deciding on measures to meet the more stringent ozone standard because the implications of the measures go beyond one's own community. They may involve such things as controls on urban growth and restrictions on the use of certain fuels for areas designated "non-attainment" for ozone. They will impose higher costs on electric utilities and affect people's everyday lives.

After the presentations of Ms. McCabe and Mr. Paul, Senator Gard explained that she had decided to create four subcommittees with the EQSC: the Air Subcommittee, the Land and Water Subcommittee, the IDEM Administrative Issues Subcommittee, and the IDEM and Public Health Subcommittee. She distributed a paper listing the EQSC members and other interested individuals she had named as members of each subcommittee. She explained that she had put the named individuals on the subcommittees in which she thought they would be most interested, but that she was open to making changes in the subcommittees' membership upon request.

Senator Gard explained that an individual who is not a member of the EQSC but who is named to a subcommittee would be considered an "advisory member" of the subcommittee and would not be entitled to compensation for attending the subcommittee's meetings. Commissioner Kaplan said that IDEM staff members will be able to attend subcommittee meetings and will be available as a resource to the subcommittees.

The EQSC members decided upon **Tuesday, August 10th at 10:00 a.m.** as the date and starting time for the next EQSC meeting. The meeting was then adjourned.

(These minutes were prepared by Craig Mortell.)